

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maryann Wong	Team: Team # 2	CCRB Case #: 201007299	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/27/2010 1:42 AM	Location of Incident: Van Sicklen and Stanley Avenue	Precinct: 75	18 Mo. SOL 11/27/2011	EO SOL 11/27/2011	
Date/Time CV Reported Mon, 05/31/2010 10:51 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 05/31/2010 10:51 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Mcivor	08466	899570	075 PCT
2. SGT Robert Martinez	01369	922716	075 PCT
3. POM David Pralgo	23516	916465	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gregory Donato	06341	946948	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Mcivor	Force: Officer Brian Mcivor struck § 87(2)(b) with a baton.	
B.POM David Pralgo	Force: Officer David Pralgo used physical force against § 87(2)(b)	
C.SGT Robert Martinez	Force: Sergeant Robert Martinez used pepper spray against individuals.	

## Case Summary

On May 28, 2010, § 87(2)(b) called 911 and the operator transferred him to IAB, log #10-27082. § 87(2)(b) On May 30, 2010, a complaint was filed at the CCRB via the on-line website; § 87(2)(b) and § 87(2)(b) were all listed as the complainant/victims of this complaint (encl. 3A-F).

On May 27, 2010, at 1:42 a.m., § 87(2)(b) and his friends had a physical altercation with the police at Van Sicklen Avenue and Stanley Avenue in Brooklyn. § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) was also arrested, but her arrest is sealed. The following allegations resulted from the officers' actions.

- **Allegation A – Force: Officer Brian Mcivor struck § 87(2)(b) with a baton.**  
§ 87(2)(g)
- **Allegation B – Force: Officer David Pralgo used physical force against § 87(2)(b)**  
§ 87(2)(g)
- **Allegation C – Force: Sergeant Martinez used pepper spray against individuals.**  
§ 87(2)(g)

## Results of Investigation

### Civilian Statement

#### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a black male, 6'2" tall, 202 lbs, age § 87(2)(b) with black hair and brown eyes.

### CCRB Testimony

On June 8, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 4A-E). On May 27, 2010, at 1:42 a.m., § 87(2)(b) and his friends, § 87(2)(b) (age § 87(2)(b)) (age § 87(2)(b)) and brother of § 87(2)(b) § 87(2)(b) (age § 87(2)(b)) and sister of § 87(2)(b) § 87(2)(b) (age § 87(2)(b)) and daughter of § 87(2)(b) § 87(2)(b) (age § 87(2)(b)) and § 87(2)(b) (age § 87(2)(b)) were walking on Van Sicklen Street, near Stanley Avenue in the Bronx. § 87(2)(b) believed that a couple more individuals might have been with them, but he did not remember who they were. § 87(2)(b) did not know who § 87(2)(b) was. No person in the group had drunk any alcoholic beverages that evening.

§ 87(2)(b) and § 87(2)(b) started arguing about something, but § 87(2)(b) could not remember what they were arguing about. Other members of the group tried to calm them down. No person was standing in the street and the argument never became physical. An unmarked black vehicle pulled up and three officers, Sergeant Robert Martinez, Officer Brian Mcivor and Officer David Pralgo, all identified via investigation<sup>1</sup>, got out of the vehicle.

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<sup>1</sup> § 87(2)(b) described all the officers as white males. IAB identified these officers as being involved but did not note how they were identified; their roles in the incident were determined from their CCRB interviews during which they admitted to all of the allegations.

Officer Mcivor asked the group if everything was okay. § 87(2)(b) said that everything was okay and she, along with rest of the group, started walking away. Officer Mcivor grabbed § 87(2)(b)'s arm. § 87(2)(b) grabbed § 87(2)(b)'s other arm and pulled her away from Officer Mcivor. Officer Mcivor took out his baton and hit § 87(2)(b) right arm two times. § 87(2)(b) asked what was happening. He did not approach Officer Mcivor or make any physical provocation. Officer Mcivor hit the baton against the left side of § 87(2)(b) face, brought him to the ground and handcuffed him.

While § 87(2)(b) was on the ground, he saw Officer Pralgo holding § 87(2)(b) on the ground. § 87(2)(b) was not in handcuffs and was lying down face forward, with his face turned to the side. Officer Pralgo punched § 87(2)(b) three to five times. § 87(2)(b) did not know where exactly Officer Pralgo punched § 87(2)(b) or what the extent of their interaction was. § 87(2)(b) did not witness what happened to the other individuals but he heard that § 87(2)(b) and § 87(2)(b) were pepper sprayed. He also heard that § 87(2)(b) and § 87(2)(b) walked away from the scene and were not arrested nor issued summonses. § 87(2)(b) was arrested for obstruction of § 87(2)(b). § 87(2)(b) was bleeding on the left side of his face because of the baton and was seen at § 87(2)(b) in regards. He sustained a bruise.

### Civilians not Interviewed

§ 87(2)(b) and § 87(2)(b) missed one appointment (scheduled separately with each individual) without calling to cancel and did not return numerous phone calls. § 87(2)(b) and § 87(2)(b) missed three appointments (scheduled separately) without calling to cancel.

§ 87(2)(b) identified himself in the 911 call as § 87(2)(b)'s son. § 87(2)(b) later informed the CCRB that § 87(2)(b) was a friend of her daughter's, § 87(2)(b). On June 10, 2010, the CCRB spoke with § 87(2)(b) who stated that he arrived after the incident was over and did not witness any of the allegations. He could only confirm that around four individuals had been pepper sprayed, including § 87(2)(b).

§ 87(2)(b) informed the CCRB that § 87(2)(b) was homeless. § 87(2)(b) did not know which homeless shelter her daughter belonged to. The CCRB contacted the Department of Homeless Services and asked them to run a search for an individual named § 87(2)(b). The search yielded negative results.

### NYPD Statements

#### Subject Officer: OFFICER BRIAN MCIVOR

- Officer Mcivor is a white male, 6' tall, 185 lbs, age § 87(2)(b) with brown hair and hazel eyes.
- On May 29, 2010, Officer Mcivor worked from 8:30 p.m. to 5:05 a.m. the following day, was assigned to anti-crime, worked with Sergeant Martinez and Officer Pralgo, dressed in plainclothes and was assigned to an unmarked police vehicle.

#### Memo Book

Officer Mcivor did not have any memo book entries regarding the incident.

### **CCRB Testimony**

On July 21, 2010, Officer Mcivor was interviewed at the CCRB (encl. 5A-D). The officers observed about ten or more individuals standing in the middle of the intersection on a double yellow. Individuals in the group were involved in a verbal and physical dispute. The officers could not see exactly what was happening, but people were screaming, pushing and shoving each other. By the time the officers got there, the fight had separated into two groups. Individuals in both groups were yelling at each other. Some of individuals were trying to push other individuals back so that the fight did not start up again.

A couple of females were screaming at one male in particular, who was later identified as § 87(2)(b). § 87(2)(b) was standing across from them and a male was trying to hold § 87(2)(b) back. Finally § 87(2)(b) broke away and advanced towards the females as if he was going to punch one of them. Officer Mcivor immediately intervened; he screamed “police,” grabbed § 87(2)(b) and placed him against a fence. Officer Mcivor repeatedly told § 87(2)(b) to calm down, but § 87(2)(b) tried to pull away and forcibly pushed his body off the fence. § 87(2)(b) was also extremely intoxicated. Officer Mcivor tried to pin him against the fence.

About two males and three or four very large and robust females grabbed Officer Mcivor from behind and tried to pull him off of § 87(2)(b). Sergeant Martinez and Officer Pralgo physically pushed the individuals back and also screamed for them to get back. § 87(2)(b) got increasingly agitated and continued to physically resist. The two men struggled with one another by grabbing each others arms and they both fell over the fence and onto the ground. Officer Pralgo ran around to assist Officer Mcivor and they both tried to pin § 87(2)(b) onto the ground. Officer Mcivor did not punch § 87(2)(b) but tried to grab his arms.

The individuals continued to physically interfere with the arrest and the situation was very dangerous because there were only three officers against over ten large individuals. § 87(2)(b) rushed towards Officer Mcivor with his fists up. Officer Mcivor took out his baton and hit § 87(2)(b) once in the knee. § 87(2)(b) took three or four steps back. Officer Mcivor again brought his attention towards § 87(2)(b) who still was not handcuffed. The scene was very chaotic and Officer Mcivor could not account for what Sergeant Martinez and Officer Pralgo were doing.

The crowd became increasingly aggressive and surrounded the officers. The officers could not control them and the situation was dangerous. Sergeant Martinez took out his pepper spray and released it in a sweeping motion against the five or so individuals who were attacking the officers. Because of this, everyone backed up. At some point, either Sergeant Martinez or Officer Pralgo called for assistance, but back up had not yet arrived at this point.

§ 87(2)(b) regained himself and again approached Officer Mcivor, who was trying to handcuff § 87(2)(b). Officer Mcivor yelled for him to back up. § 87(2)(b) raised his arms in a fighting stance with his fists clenched and swung at Officer Mcivor. Officer Mcivor kicked § 87(2)(b) in the chest and § 87(2)(b) stepped backward, shrugged and then approached Officer Mcivor again. § 87(2)(b) screamed something derogatory and rushed at Officer Mcivor again with his fists in the air. Officer Mcivor grabbed his baton and hit § 87(2)(b) arm which was raised. The baton hit § 87(2)(b) arm, went right through the arm and hit the side of § 87(2)(b) face. Officer Mcivor had not intended to hit § 87(2)(b) head, but this is what happened. § 87(2)(b) fell to the ground. Officer Mcivor jumped on top of § 87(2)(b) and handcuffed him. While

Officer Mcivor was handcuffing § 87(2)(b) back-up arrived. Officer Pralgo or a responding officer handcuffed § 87(2)(b). At the precinct, § 87(2)(b) complained of pain to his face and his jaw. He was taken to § 87(2)(b) and returned with a bruised cheek. Officer Mcivor did not know if any other individual was arrested or given a summons beyond § 87(2)(b) and § 87(2)(b).

**Subject Officer: SERGEANT ROBERT MARTINEZ**

- *Sergeant Martinez is a white/Hispanic male, 6'1" tall, 205 lbs, age § 87(2)(b) bald with brown eyes.*
- *On May 27, 2010, Sergeant Martinez worked from 10:26 p.m. to 5:10 a.m., was assigned as the anti-crime supervisor, worked with Officer Pralgo and Officer Mcivor, dressed in plainclothes and was assigned to an unmarked gold vehicle.*

**Memo Book**

Sergeant Martinez did not have any memo book entries regarding the incident.

**CCRB Testimony**

On July 8, 2010, Sergeant Martinez was interviewed at the CCRB (encl. 6A-B). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) punched a female in the cheek. Lots of people started pulling at each other and a large fight ensued. The officers tried to intervene and the group turned on them and started punching and attacking the officers. The group surrounded the three officers. Officer Pralgo went flying against the fence with § 87(2)(b).

The officers initially tried to separate § 87(2)(b) from the female. § 87(2)(b) started swinging at Officer Mcivor and Officer Pralgo. All three men fell to the ground and into a fence. They wrestled him on the ground and handcuffed him. The crowd started moving in and Sergeant Martinez turned to it. Sergeant Martinez took out his mace and told them that he would use it unless they got back. Members of the crowd moved in and started punching and kicking Sergeant Martinez.

Sergeant Martinez grabbed one of the males that was most aggressive and multiple people started grabbing at him and pulling his shirt. A female, later identified as § 87(2)(b) started kicking and punching Sergeant Martinez. § 87(2)(b) along with six or seven other people, started attacking Sergeant Martinez. Sergeant Martinez took his mace out and sprayed it in a sweeping motion on the individuals who were attacking him. He did this because they outnumbered him and because he feared for the safety of both him and his officers. A couple individuals fell down and the rest started backing off.

§ 87(2)(b) came at Officer Mcivor and started punching him. Sergeant Martinez could not see exactly what happened because the scene was chaotic, but he knew that Officer Mcivor took out his baton and hit § 87(2)(b) arm in order to get his arm behind his back. § 87(2)(b) had his hands up. Sergeant Martinez believed that the baton did hit § 87(2)(b) face, but thought it was an accident since Officer Mcivor was trying to hit § 87(2)(b) arms, which were throwing punches. Sergeant Martinez did not use his baton against any individual.

Shortly after the mace was used, responding officers arrived. Sergeant Martinez handcuffed § 87(2)(b) and § 87(2)(b) were arrested. At the precinct, when

Sergeant Martinez was taking care of paperwork for the three individuals, he found out that they were intoxicated because they smelled strongly of alcohol. The officers did not go line-of-duty for their injuries. § 87(2)(b) went to the hospital for a bruise to his cheek, probably caused by Officer Mcivor's baton.

**Subject Officer: OFFICER DAVID PRALGO**

- *Officer Pralgo is a white male, 5'11" tall, 240lbs, age § 87(2)(b) with brown hair and brown eyes.*
- *On May 27, 2010, Officer Pralgo worked from 8:30 p.m. to 5:05 a.m. the following day, was assigned to anti-crime, worked with Sergeant Martinez and Officer Mcivor, dressed in plainclothes and was assigned to an unmarked police vehicle.*

**Memo Book**

Officer Pralgo did not bring his memo book to his interview but remembered that he wrote down the arrest and nothing else. The memo book was requested and will be added to the case file upon receipt.

**CCRB Testimony**

On July 29, 2010, Officer Pralgo was interviewed at the CCRB (encl. 7A-B). § 87(2)(g)

The officers saw a large group, possibly 10-15 people physically fighting each other. All the individuals were extremely intoxicated as evidenced by the smell of alcohol on their breath. As they got closer, § 87(2)(b) started hitting a female. Officer Pralgo and Officer Mcivor immediately intervened. § 87(2)(b) grabbed the front of Officer Pralgo's shirt. Officer Pralgo took out his asp because he was going to use it against § 87(2)(b) but then all three males fell against the gate. The gate had a door in it, so the door opened and all three males fell to the ground, struggling with one another. Officer Pralgo tried to grab § 87(2)(b)'s arms but he resisted by flailing his arms. Officer Pralgo did not punch § 87(2)(b).

Officer Pralgo did not witness Officer Mcivor use his nightstick, but Officer Mcivor later told him that he used it. Officer Pralgo did not know what happened with § 87(2)(b) because he was focused on § 87(2)(b) the entire time, and because the scene was too chaotic.

**Witness Officer: OFFICER DAVID DONATO**

- *Officer Donato is a white male, 6' tall, 205lbs, age § 87(2)(b) with brown hair and brown eyes.*
- *On May 27, 2010, Officer Donato worked from 7:30 p.m. to 4:05 a.m., was assigned to foot patrol, worked with Officer Andrew Demichael and dressed in uniform and Sergeant Anthony Gulotta was his supervisor.*

**Memo Book**

Officer Donato did not have any entries in his memo book regarding the incident.

**CCRB Testimony**

On July 8, 2010, Officer Donato was interviewed at the CCRB (encl. 8A-E). Officer Donato was interviewed because IAB identified him as a witness officer in their complaint report. Officer Donato was not present at the incident. According to his memo book, at 12:36 a.m., Officer Donato wrote a 250 (stop-and-frisk report) at Loring Avenue and at 1:45 a.m., Officer Donato was scratched by a supervisor at the same location. His location at Loring Avenue is about a half a mile away from the incident location. Officer Donato did not remember the incident, did not

work with Sergeant Martinez, Officer Mcivor or Officer Pralgo that day, and did not recognize the arrest photos of § 87(2)(b) and § 87(2)(b)

#### **Officers not Interviewed**

§ 87(2)(g)

#### **Medical Records**

§ 87(2)(b) was seen at § 87(2)(b) regarding the injury to his face. These records were requested and will be added to the case file upon receipt. § 87(2)(g)

#### **NYPD Documents**

##### **Arrest Photo (encl. 4C)**

§ 87(2)(b) arrest photo does not show any visible injuries to his face. There is possible swelling to the left side of his face.

#### **Status of Civil Proceedings (encl. 11A)**

§ 87(2)(b) has not filed a notice of claim in regard to the incident.

#### **Arrest Disposition**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian Criminal History (encl. 12A-K)**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 1H).

#### **Subject Officers CCRB History**

- Officer Mcivor has been a member of the service for 19 years and there are two substantiated CCRB allegations against him. In case #200301969, there is an abuse of authority allegation for which Officer Mcivor received instructions. In case #200905114, there was a discourtesy allegation for which there was no recommendation (encl. 1A-B).
- Officer Pralgo has been a member of the service for 15 years and there is one substantiated CCRB allegation against him. In case #200905114, there is a force allegation for which there was no recommendation (encl. 1E-G)

- Sergeant Martinez has been a member of the service for 11 years and there are two substantiated CCRB allegations against him. In case #200205713, there is a discourtesy allegation for which Sergeant Martinez received a command discipline. In case #200704280, there are force and abuse of authority allegations for which there was no disciplinary action (encl. 1C-D).

## Conclusion

### Identification of Subject Officers

- Officer Mcivor, Officer Pralgo and Sergeant Martinez admitted to interacting with § 87(2)(b) and his party.

### Investigative Findings and Recommendations

#### Allegation A – Force: Officer Brian Mcivor struck § 87(2)(b) with a baton.

#### Allegation B – Force: Officer David Pralgo used physical force against § 87(2)(b)

All parties agree that Officer Mcivor struck § 87(2)(b) in his face with a baton. § 87(2)(b) stated that he did not approach Officer Mcivor or make any physical provocation towards him. § 87(2)(b) also testified that he observed Officer Pralgo punching § 87(2)(b) while he was on the ground and not yet in handcuffs. All officers corroborate that § 87(2)(b) along with many other individuals, physically interfered with § 87(2)(b)'s arrest. They also stated that § 87(2)(b) resisted the arrest.

§ 87(2)(g)

§ 87(2)(b) Officer Mcivor testified that, when he was trying to gain control over § 87(2)(b) § 87(2)(b) continually interfered. He grabbed his baton and hit § 87(2)(b) arm, which was raised. The baton hit § 87(2)(b) arm, went right down the arm and hit the side of § 87(2)(b) face. Officer Mcivor had not intended to hit § 87(2)(b) face. § 87(2)(g)

Officer Pralgo testified that he did not punch § 87(2)(b) but did stated that he attempted to use his baton against him and grabbed his arms to gain control over him. He also confirmed that numerous individuals were grabbing him from behind and that the situation was dangerous.

The NYPD Patrol Guide, section 203-11 (encl. 1A-B), states that police officers must use the amount of force necessary to overcome resistance. § 87(2)(g)

#### Allegation C – Force: Sergeant Martinez used pepper spray against individuals.

§ 87(2)(b) did not witness Sergeant Martinez release the pepper spray, but later heard that § 87(2)(b) and § 87(2)(b) were pepper sprayed. As discussed earlier, § 87(2)(b) and § 87(2)(b) were uncooperative and the CCRB was unable to obtain a statement from them. They did, however, indicate in their initial complaint that pepper spray was used. All officers admitted to using pepper spray.

§ 87(2)(g)

§ 87(2)(b) Sergeant Martinez testified that



numerous individuals started attacking him and his officers as they tried to gain control over § 87(2)(b) § 87(2)(b) Sergeant Martinez used his pepper spray in a sweeping motion against the individuals who were moving in on the officers; he believed that the spray hit about five people

According to the NYPD Patrol Guide, section 212-95 (encl. 1C-E), an officer can use pepper spray to protect self or another from unlawful use of force. § 87(2)(g) § 87(2)(g)

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Team: \_\_\_\_\_ :

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date